

MARY ANN SMITH
Deputy Commissioner
SEAN ROONEY
Assistant Chief Counsel
BLAINE A. NOBLETT (State Bar No. 235612)
Senior Counsel
Department of Business Oversight
320 West 4th Street, Suite 750
Los Angeles, California 90013-2344
(213) 576-1396 (213) 576-7181 (Fax)
Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of the Accusation of:)	OAH Case Nos.: 2018030852 and 2018030854
THE COMMISSIONER OF BUSINESS)	
OVERSIGHT,)	Agency Case No.: 413-1101
)	
Complainant,)	AMENDED SETTLEMENT AGREEMENT
)	
v.)	Hearing Dates: September 10-12, 2018
)	Hearing Time: 9:00 a.m.
)	Judge: None Assigned
VENTA FINANCIAL GROUP, INC., dba)	
ALTERRA HOME LOANS,)	
)	
Respondent.)	
)	
)	
In the Matter of the Order to Discontinue)	
Violations of:)	
THE COMMISSIONER OF BUSINESS)	
OVERSIGHT,)	
)	
Complainant,)	
)	
v.)	
)	
VENTA FINANCIAL GROUP, INC., dba)	
ALTERRA HOME LOANS,)	
)	
Respondent.)	

1 This Amended Settlement Agreement (Settlement Agreement) is entered into between the
2 Commissioner of Business Oversight (Commissioner) and Venta Financial Group, Inc., dba Alterra
3 Home Loans (Venta) and is made with respect to the following facts:

4 RECITALS

5 A. The Commissioner has jurisdiction over the licensing and regulation of persons and
6 entities engaged in the business of lending and servicing residential mortgage loans under the
7 California Residential Mortgage Lending Act (Fin. Code, § 50000 et seq.) (CRMLA).

8 B. Venta is or was a Nevada corporation, authorized to conduct business in California,
9 with its principal place of business located at 1300 South Jones Boulevard, Suite 150, Las Vegas,
10 Nevada. Venta is a residential mortgage lender and servicer licensed under the CRMLA and
11 employs mortgage loan originators.

12 C. Jason Madiedo is Venta's chief executive officer and, as such, is authorized to enter
13 into this Settlement Agreement on behalf of Venta.

14 D. During the examination of Venta under the CRMLA commencing October 17, 2016,
15 the Commissioner determined the following (Examination Findings):

16 i. In at least 10 out of 30 funded loan files the Commissioner's staff reviewed,
17 Venta overcharged borrowers per diem interest in excess of one day prior to the disbursement of loan
18 proceeds in violation of Financial Code section 50204, subdivision (o). The per diem interest
19 overcharges varied between \$29.61 and \$70.91, and Venta overcharged borrowers per diem interest
20 from at least one to three days.

21 ii. California Per Diem Interest Disclosure forms were found in five loan files
22 with per diem interest overcharges. But the disclosures obtained from Venta were not prepared in
23 accordance with Civil Code section 2948.5, subdivision (b), or were not applicable, and therefore
24 were not considered when calculating per diem interest charges.

25 iii. The Commissioner previously found Venta had overcharged borrowers per
26 diem interest in three out of 11 funded loan files during the September 2012 regulatory examination.
27 Based on the findings of the 2012 regulatory examination, the Commissioner instructed Venta to
28

1 implement such procedures as necessary to ensure it would not overcharge per diem interest in the
2 future.

3 E. On the basis of the Commissioner's determination that Venta had violated the
4 CRMLA as described in the Examination Findings above, on February 28, 2018, the Commissioner
5 personally served Venta with the Accusation, Notice of Intention to Issue Orders Suspending
6 Residential Mortgage Lender License and to Levy Penalties and accompanying documents dated
7 February 26, 2018 (collectively, Accusation).

8 F. Based upon the Examination Findings described above, on February 28, 2018 the
9 Commissioner personally served Venta with the Order to Discontinue Violations Under Financial
10 Code section 50321, Statement of Facts in Support of Order to Discontinue Violations Under
11 Financial Code section 50321 and Notice of Intent to Make Order Final dated February 26, 2018
12 (collectively, Order to Discontinue Violations).

13 G. Venta timely filed its Notice of Defense under section 11506 of the Government Code
14 for the purpose of requesting an administrative hearing on the allegations set forth in the Accusation
15 and Order to Discontinue Violations. The administrative hearing is currently set to begin trial before
16 the Office of Administrative Hearings on September 10 through 12, 2018.

17 H. The Commissioner finds that entering into this Settlement Agreement is in the public
18 interest, protects consumers, and is consistent with the purposes fairly intended by the policies and
19 provisions of the CRMLA.

20 NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set
21 forth herein, the parties agree as follows:

22 TERMS AND CONDITIONS

23 1. Purpose. It is the intention and desire of the parties to resolve this matter amicably
24 without the necessity of a hearing or other litigation for the purpose of judicial economy and
25 expediency and to avoid the expense of a hearing and possible further court proceedings.

26 2. Acknowledgment. Venta acknowledges that the Commissioner issued an Accusation
27 and Order to Discontinue Violations, in which the Commissioner found the company had violated
28 certain provisions of the CRMLA as described in the Examination Findings above.

1 3. Waiver of Hearing Rights. Venta agrees that this Settlement Agreement shall have
2 the effect of withdrawing its request for an administrative hearing on the matter described herein.
3 Venta acknowledges its right to an administrative hearing under the CRMLA in connection with the
4 Accusation and Order to Discontinue Violations, and hereby waives such right to a hearing and to
5 any reconsideration, appeal, or other rights which may be afforded it under the CRMLA, the
6 Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.), the Code of Civil Procedure
7 (CCP) (Code Civ. Proc., § 1 et seq.), or any other provision of law in connection with this matter.

8 4. Final Order. Venta agrees that the Order to Discontinue Violations described above
9 in paragraph F. is hereby deemed a final order.

10 5. Administrative Penalty. As part of this Settlement Agreement, Venta agrees to pay to
11 the Commissioner an administrative penalty of \$110,000.00 (the Penalty). The Penalty shall be due
12 within 48 hours of the Effective Date of this Settlement Agreement, as defined in paragraph 21., and
13 made payable in the form of a cashier's check or Automated Clearing House deposit to the
14 "Department of Business Oversight," and transmitted to the attention of Accounting – Enforcement
15 Division, Department of Business Oversight, 1515 K Street, Suite 200, Sacramento, California
16 95814. Notice of all payments shall be sent to Blaine A. Noblett, Senior Counsel, Department of
17 Business Oversight, 320 West 4th Street, Suite 750, Los Angeles, California 90013-2344 or by e-
18 mail at blaine.noblett@dbo.ca.gov.

19 6. Third-Party Audit. Venta agrees to conduct an audit (the Third-Party Audit), by and
20 through an independent certified public accountant, in accordance with procedures agreed upon by
21 the parties, of per diem interest charges for all California loans for the period June 1, 2017 through
22 to the Effective Date of this Settlement Agreement, as defined in paragraph 21. The Third-Party
23 Audit must cover all California loans originated during that period and must identify any borrower
24 who was overcharged per diem interest during that period. Venta further agrees to refund any per
25 diem interest overcharge, together with 10-percent interest from the date of disbursement until the
26 date the refund check is cut (Refund or Refunds).

27 (a) **Audit Report.** Venta, by and through its independent certified public
28 accountant, will submit to the Department the results of its audit (the audit report) within 90 days

from the Effective Date of this Settlement Agreement, as defined in paragraph 21. The audit report shall include, at a minimum, the total number of loans made during the period, the number of loans with per diem interest overcharges, and for each loan, the report shall list the borrower's loan number, name, address, loan amount, loan date, interest rate, disbursement date, date per diem interest commenced, per diem interest charged, daily per diem interest amount, number of days per diem interest charged, number of days per diem interest overcharged (if applicable), overcharge amount (if applicable), date of refund (if applicable), proof of refund (if applicable).

(b) **Administrative Penalty.** Venta further agrees that it will pay an administrative penalty to the Commissioner, upon submission of the audit report, equal to \$200.00 for each per diem interest overcharge violation identified during the Third-Party Audit, which was not refunded to the borrower within 30 days of the loan disbursement.

7. Payment of Refunds. Venta shall apply each Refund as follows:

(a) Venta agrees to make Refunds (with 10-percent interest per annum) to all of the borrowers who were charged excessive per diem interest, as identified in the audit report. Venta agrees to mail each Refund to the applicable borrower's last known address, no later than 10 business days following completion of the audit report. If the audit report shows Venta refunded excessive per diem interest plus 10-percent interest within 30 days of loan disbursement, Venta shall not be obligated to make any further refund. If the audit report shows an overpayment of per diem interest plus 10-percent interest per annum to any borrower based on a previous refund from Venta, then Venta agrees not to collect that amount from the borrower.

(b) Any Refund made under this Settlement Agreement shall be accompanied by a cover letter addressed to the affected borrower that states "As a result of an examination by the Department of Business Oversight, a refund or adjustment in the amount of \$XXXX is being made for your benefit. If you have any questions concerning this refund, please contact (lender) at (800) XXX-XXXX," provided however that such notice shall not be required of refunds made prior to the date of this Settlement Agreement

(c) Venta shall escheat all unclaimed Refunds to the California State

Controller's Office within the period provided by and in accordance with Code of Civil Procedure section 1519.5 of the Unclaimed Property Law. (Code of Civ. Proc., § 1500 et seq.)

8. Revised Policies and Procedures. Within 15 days from the Effective Date of this Settlement Agreement, as defined in paragraph 21., Venta agrees to provide the Commissioner with its updated policies and procedures designed to ensure compliance with the CRMLA's per diem interest requirements for the Commissioner's review and approval. If the Commissioner or her staff determines that any of the policies or procedures are deficient, Venta agrees to revise the policies and procedures to the Commissioner's satisfaction. If the Commissioner determines that the policies and procedures are acceptable if followed, the Commissioner will inform Venta of that fact.

9. Remedies for Breach. Venta agrees that, following 10 business days from the receipt of notice from the Commissioner of Venta's failure to comply with any term of this Settlement Agreement, Venta may be suspended from engaging in business under its CRMLA lenders license upon the issuance of an order from the Commissioner until it provides evidence satisfactory to the Commissioner that the terms are met. Venta hereby waives any notice and hearing rights that may be afforded under the CRMLA, APA, CCP, or any other provision of law to contest immediate suspension. Venta further acknowledges that its failure to comply with paragraphs 5. through 8. of this Settlement Agreement shall constitute a failure to comply with this Settlement Agreement and be subject to this paragraph.

10. Consideration. Except as set forth in paragraph 9. of this Settlement Agreement, in consideration of Venta's agreement to pay the Penalty, and other relief as provided in this Settlement Agreement, the Commissioner hereby agrees that she will take no further action against Venta's CRMLA license because of this action. Accordingly, this Settlement Agreement does not affect the licensing status of Venta set forth in paragraph B. of the above Recitals.

11. Full and Final Settlement. The parties hereby acknowledge and agree that this Settlement Agreement is intended to constitute a full, final, and complete resolution of the Accusation and Order to Discontinue Violations and that no further proceedings or actions will be brought by the Commissioner in connection with the Accusation and Order to Discontinue Violations, either under the CRMLA or any other provision of law, excepting any proceeding to

enforce compliance with the terms of this Settlement Agreement or action if such proceeding is based upon discovery of new and further violations of the CRMLA which do not form the basis for this Settlement Agreement or which Venta knowingly concealed from the Commissioner.

12. Commissioner's Duties. The parties further acknowledge and agree that nothing in this Settlement Agreement shall limit the Commissioner's ability to assist any other agency (city, county, state, or federal) with any prosecution, administrative, civil, or criminal, brought by any such agency against Venta or any other person based upon any of the activities alleged in this matter or otherwise.

13. Binding. This Settlement Agreement is binding on all heirs, assigns, or successors in interest.

14. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it has received independent advice from its attorney(s) or representative(s) with respect to the advisability of executing this Settlement Agreement.

15. Counterparts. The parties agree that this Settlement Agreement may be executed in one or more separate counterparts, each of which shall be deemed an original when so executed. Such counterparts shall together constitute and be one and the same instrument.

16. Waiver, Modification, and Qualified Integration. The waiver of any provision of this Settlement Agreement shall not operate to waive any other provision set forth herein. No waiver, amendment, or modification of this Settlement Agreement shall be valid or binding to any extent unless it is in writing and signed by all the parties affected by it.

17. Headings and Governing Law. The headings to the paragraphs of this Settlement Agreement are inserted for convenience only and will not be deemed a part hereof or affect the construction or interpretation of the provisions hereof. This Settlement Agreement shall be construed and enforced in accordance with and governed by California law.

18. Full Integration. Each of the parties represents, warrants, and agrees that in executing this Settlement Agreement it has relied solely on the statements set forth herein and the advice of its own counsel. Each of the parties further represents, warrants, and agrees that in executing this Settlement Agreement it has placed no reliance on any statement, representation, or promise of any

other party, or any other person or entity not expressly set forth herein, or upon the failure of any party or any other person or entity to make any statement, representation, or disclosure of anything whatsoever. The parties have included this clause (1) to preclude any claim that any party was in any way fraudulently induced to execute this Settlement Agreement and (2) to preclude the introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this Settlement Agreement.

19. Presumption from Drafting. In that the parties have had the opportunity to draft, review, and edit the language of this Settlement Agreement, no presumption for or against any party arising out of drafting all or any part of this Settlement Agreement will be applied in any action relating to, connected to, or involving this Settlement Agreement. Accordingly, the parties waive the benefit of Civil Code section 1654 and any successor or amended statute, providing that in cases of uncertainty, language of a contract should be interpreted most strongly against the party that caused the uncertainty to exist.

20. Voluntary Agreement. Venta enters into this Settlement Agreement voluntarily and without coercion and acknowledges that no promises, threats, or assurances have been made by the Commissioner, or any officer or agent thereof, about this Settlement Agreement.

21. Effective Date. This Settlement Agreement shall become final and effective when signed by all parties and delivered by the Commissioner's agent via e-mail to Venta's counsel at jjaffe@mayerbrown.com.

22. Notice. Any notices required under this Settlement Agreement shall be provided to each party at the following addresses:

If to Respondent to: Jason Madiedo, CEO
Venta Financial Group, Inc., dba Alterra Home Loans
1300 S. Jones Boulevard, Suite 150
Las Vegas, Nevada 89146

If to the Commissioner to: Blaine A. Noblett, Senior Counsel
Department of Business Oversight
320 West 4th Street, Suite 750
Los Angeles, California 90013-2344

23. Public Record. Venta acknowledges that this Settlement Agreement is a public

1 record.

2 24. Authority to Execute. Each signatory hereto covenants that he/she possesses all
3 necessary capacity and authority to sign and enter into this Settlement Agreement.

4 IN WITNESS WHEREOF, the parties hereto have approved and executed this Settlement
5 Agreement on the dates set forth opposite their respective signatures.

6 Dated: 8/1/18

JAN LYNN OWEN
Commissioner of Business Oversight

8 By _____
9 MARY ANN SMITH
10 Deputy Commissioner
11 Enforcement Division

12 VENTA FINANCIAL GROUP, INC., dba ALTERRA
13 HOME LOANS

14 Dated: 8/1/18

15 By _____
16 JASON MADIEDO, CEO,
17 On behalf of Venta Financial Group, Inc., dba Alterra
18 Home Loans

19 Approved as to Form and Content

20 By _____

21 Jonathan D. Jaffe, Esq.
22 Mayer Brown, LLP
23 Attorneys on behalf of Venta Financial Group, Inc., dba
24 Alterra Home Loans
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